

## Message Text

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EB:TOENDERS (SUBS)  
EB/ORF/FSE:SBOSWORTH (SUBS)  
EB/IFD/OIA:CELLIS (SUBS)  
S/S-O:DLMACK

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O R 252300Z OCT 75  
FM SECSTATE WASHDC  
TO AMEMBASSY KUWAIT IMMEDIATE  
AMEMBASSY LONDON IMMEDIATE  
INFO AMEMBASSY JIDDA

C O N F I D E N T I A L STATE 254892

EXDIS

E.O. 11652: GDS

TAGS:ENGR, KU

SUBJECT: GULF OIL COMPANY AGREEMENT WITH KUWAIT AND RESERVATION OF U.S. GOVERNMENT RIGHTS

1. WE UNDERSTAND FROM EMBASSY'S REPORTING AS WELL AS CONVERSATION WITH GULF OIL CO. OFFICIALS THAT SALE OF GULF'S AND BP'S HOLDINGS IN KUWAIT OIL CO. AND ATTENDANT ARRANGEMENTS ARE ON VERGE OF COMPLETION. GULF INFORMS US THAT IT EXPECTS TO SIGN WITH COUNCIL OF MINISTERS ON OCTOBER 26 THREE DOCUMENTS: (A) A TRANSFER AGREEMENT; (B) A SCHEDULE OF PAYMENTS; AND (C) ARRANGEMENTS FOR ONGOING OFFTAKE AT A DISCOUNT. ONLY DOCUMENT (A) WILL BE SUBMITTED TO THE NATIONAL ASSEMBLY, ON OCTOBER 28.

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PAYMENT FOR THE COMPANIES' ASSETS WILL BE AT NET BOOK

VALUE, BUT THE MODESTY OF THE SUMS SO TO BE PAID WILL BE SIGNIFICANTLY SUPPLEMENTED BY THE DISCOUNT OF 15 CENTS A BARREL ON OFFTAKE OF 450,000 BARRELS A DAY FOR FIVE YEARS (WITH THE POSSIBILITY OF EXTENDING THAT TERM ANOTHER FIVE YEARS) FOR WHICH DOCUMENT (C) WILL PROVIDE.

2. AS EMBASSY MAY KNOW, DEPARTMENT HAS CONSULTED EXTENSIVELY WITH OIL COMPANIES WHOSE ASSETS ARE BEING SOLD OR NATIONALIZED WITH A VIEW TO PRESERVING COMPANY AND, HENCE, U.S. GOVERNMENT CLAIMS FOR ADEQUATE COMPENSATION FOR SUCH ASSETS, IN THE EVENT THAT ONGOING CONTRACTS FOR OFFTAKE OR TECHNICAL ASSISTANCE SHOULD BE DISAVOWED BY THE HOST GOVERNMENTS IN QUESTION. WE HAVE PUT TO THE COMPANIES THE IDEA OF CONDITIONING, AS BEST THEY CAN, A SETTLEMENT OF THEIR CLAIMS TO FULLER COMPENSATION FOR THE ASSETS THEY ARE SURRENDERING ON THE PERFORMANCE BY HOST COUNTRIES OF THE NEW CONTRACTS FOR ONGOING ARRANGEMENTS. THE COMPANIES HAVE GENERALLY ACCEPTED THE DEPARTMENT'S SUGGESTION AND ARE ENDEAVORING TO IMPLEMENT IT INSOFAR AS POLITICAL AND COMMERCIAL REALITIES PERMIT. AT THE SAME TIME, CERTAIN COMPANIES, NOTABLY GULF AND SOCAL, HAVE PUT TO US THE DESIRABILITY OF THE U.S. GOVERNMENT ENDEAVORING IN A SUITABLE FASHION TO LINK THE SETTLEMENT OF CLAIMS FOR COMPENSATION FOR ASSETS NOW BEING TRANSFERRED TO PERFORMANCE OF THE ONGOING CONTRACTS, AND TO RESERVE U.S. RIGHTS TO ASSERT CLAIMS FOR ADEQUATE COMPENSATION FOR THOSE ASSETS, IF ONGOING CONTRACTS ARE REPUDIATED BEFORE THE AGREED TERM. WE HAVE BEEN GIVING CONSIDERATION TO THE POSSIBILITY IN MORE THAN ONE COUNTRY.

3. IN PURSUANCE OF COMPANY EFFORTS THEMSELVES TO LINK CLAIMS SETTLEMENT TO PERFORMANCE OF ONGOING CONTRACTS, GULF INFORMS US THAT IT HAS SUCCEEDED IN INCORPORATING INTO THE TRANSFER AGREEMENT REFERRED TO IN PARA. 1 OF THIS MESSAGE THE FOLLOWING: "THE GOVERNMENT AND THE COMPANIES AGREE TO ENTER INTO ARRANGEMENTS CONCERNING THE COMMERCIAL SUPPLY TO THE COMPANIES OF KUWAIT CRUDE OIL AND MATTERS RELATED THERETO." IN GULF'S VIEW, BY INCLUDING THIS PROVISION IN THE TRANSFER AGREEMENT, CONFIDENTIAL

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WHICH PROVIDES FOR PAYMENT OF COMPENSATION FOR TRANSFERRED EQUITY, THERE IS ROOM FOR A FUTURE ARGUMENT THAT, SHOULD THE ONGOING ARRANGEMENTS BE REPUDIATED, GULF COULD CLAIM NOT ONLY FOR BREACH OF THOSE ARRANGEMENTS BUT FOR THE FULLER COMPENSATION WHICH IT SHOULD HAVE BEEN PAID FOR THE TRANSFER OF ITS STOCK.

4. GULF OIL CO. GENERAL COUNSEL ASKED THE DEPARTMENT'S

OFFICE OF THE LEGAL ADVISER WHETHER, IN L'S VIEW, THIS ADMITTEDLY MUTED AND GENERALIZED PROVISION IS SUFFICIENT TO PERMIT THE USG ONE DAY TO ESPOUSE A DIPLOMATIC CLAIM FOR FULLER COMPENSATION FOR THE SALE OF GULF'S EQUITY IN KUWAIT OIL CO., IN THE EVENT THAT ONGOING CONTRACTS ARE BREACHED BY THE KUWAIT GOVERNMENT. L'S VIEW IS THAT

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THIS PROVISION IS USEFUL, BUT THAT IT WOULD LEAVE THE ANSWER IN DOUBT. L'S CONCLUSION ACCORDINGLY IS THAT, IN ORDER TO ENSURE THAT A POSSIBILITY OF MAKING SUCH A CLAIM SURVIVES, A STATEMENT BY THE USG IS NECESSARY. GULF OIL HAS AFFIRMED THAT IT STRONGLY FAVORS THE FOLLOWING STATEMENT, PROVIDED THAT IT IS NOT TRANSMITTED TO KUWAIT BEFORE THE NATIONAL ASSEMBLY HAS ACTED.

5. WE ACCORDINGLY PLAN TO REQUEST YOU TO TRANSMIT TO THE GOK THE FOLLOWING COMMUNICATION, AS SOON AS BUT NOT BEFORE THE NATIONAL ASSEMBLY HAS COMPLETED FINAL ACTION APPROVING THE TRANSFER AGREEMENT AND WHEN THE THREE DOCUMENTS COME INTO FORCE (WHICH WE UNDERSTAND THEY WILL UPON NATIONAL ASSEMBLY APPROVAL OF THE TRANSFER AGREEMENT), AND SUBJECT TO A FINAL CHECK AS TO TIMING AND TONE WITH GULF OIL REPRESENTATIVE IN KUWAIT: "THE UNITED STATES GOVERNMENT IS GRATIFIED AT THE FACT THAT THE GOVERNMENT OF KUWAIT AND THE GULF OIL CORPORATION HAVE REACHED FINAL AGREEMENT ON THE TERMS OF TRANSFER TO KUWAIT OF GULF OIL CORPORATION'S OWNERSHIP INTERESTS IN THE KUWAIT OIL COMPANY. WHILE, AS A GENERAL RULE, THE UNITED STATES GOVERNMENT VIEWS NET BOOK VALUE AS AN INADEQUATE CRITERION FOR DETERMINING COMPENSATION TO BE PAID TO FOREIGN NATIONALS IN INSTANCES WHERE THEIR INVESTMENTS ARE TAKEN BY THE HOST GOVERNMENT, THE UNITED

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STATES GOVERNMENT WELCOMES THE ARRANGEMENTS FOR A CONTINUING COMMERCIAL RELATIONSHIP BETWEEN KUWAIT AND THE GULF OIL CORPORATION AND RECOGNIZES THAT THOSE ARRANGEMENTS BEAR SIGNIFICANTLY AND POSITIVELY UPON THE QUESTION OF SUCH COMPENSATION. THE UNITED STATES GOVERNMENT CONSEQUENTLY LOOKS UPON THESE ARRANGEMENTS AS AN INTEGRAL PART OF THE UNDERSTANDING REACHED BETWEEN THE GOVERNMENT OF KUWAIT AND THE GULF OIL CORPORATION WHICH INCLUDES AGREEMENT ON THE TERMS OF TRANSFER TO KUWAIT OF THE CORPORATION'S REMAINING OWNERSHIP INTERESTS IN THE KUWAIT OIL COMPANY. THE UNITED STATES GOVERNMENT LOOKS FORWARD TO THE IMPLEMENTATION OF THESE ARRANGEMENTS IN ACCORDANCE WITH THEIR PROVISIONS, TO THE MUTUAL BENEFIT OF KUWAIT AND THE GULF OIL CORPORATION, FOR THE TERM OF YEARS SPECIFIED AND ANY EXTENSION THEREOF. IT

WILL BE UNDERSTOOD THAT THE UNITED STATES GOVERNMENT  
RESERVES ITS RIGHTS UNDER INTERNATIONAL LAW IN THIS  
MATTER PENDING THE ACTUAL IMPLEMENTATION OF THE ARRANGE-  
MENTS IN QUESTION IN ACCORDANCE WITH THEIR PROVISIONS  
FOR THEIR FULL TERM."

6. FYI. GULF'S VIEW IS THAT, IF SUCH A STATEMENT IS  
TRANSMITTED TO GOK AFTER NATIONAL ASSEMBLY HAS ACTED, IT  
WILL NOT PRODUCE A STRONG ADVERSE GOK REACTION, OR, AT  
ANY RATE, A REACTION WHICH WILL PREJUDICE IMPLEMENTATION  
OF THE NEW ARRANGEMENTS OR USG-GOK RELATIONS. WE SEE  
SUCH A STATEMENT AS VALUABLE NOT ONLY FOR REASONS INDICATED,  
BUT BECAUSE IT MAY CONDUCE TO KUWAITI OBSERVANCE  
OF THE NEW ARRANGEMENTS, AND BECAUSE IT WILL AFFORD USG  
IMPORTANT PRECEDENT FOR POSSIBLE USE ELSEWHERE. END FYI.

7. FOR KUWAIT: AMBASSADOR'S VIEWS REQUEST SOONEST ON  
THE PROPOSED APPROACH, PARTICULARLY ANTICIPATED GOK  
REACTION.

8. FOR LONDON: DEPARTMENT HAS SUGGESTED TO GULF THAT IT  
INFORM BP OF PROPOSED ACTION. EMBASSY SHOULD INFORM  
HMG OF THE ACTION WE PLAN TO TAKE AND SEEK ITS PROMPT  
REACTION. SPECIFICALLY, WE HOPE THAT HMG WOULD DECIDE  
TO TAKE SIMILAR APPROACH WITH GOK ON BEHALF OF BP. KISSINGER

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